

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 10,151

JOINT APPENDIX

2

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

AUREA CALDERON, ROBY CALDERON, JAMES CALDERON,

Appellants,

vs.

MAURICE J. TOBEY, SECRETARY OF LABOR, and
EMPLOYEE COMPENSATION APPEALS BOARD,

Appellees.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

FILED SEP 1 1950

[Signature]

CLERK

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1 A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,151

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
Appellants,

vs.

MAURICE J. TOBIN, Secretary of Labor, et al.,
Appellees.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

Filed Dec. 17, 1948. Harry M. Hull, Clerk.

* * * *

B *Judgment Dismissing Complaint*

This cause came on for hearing on defendants' motion to dismiss the action because the court lacked jurisdiction of the subject matter of the action and upon the further ground that the action is in substance against the United States of America which has not consented to be sued and has not waived its immunity from suit, and for the further reason that judicial action in respect to the subject matter is forbidden by law, and the court having heard the argument of counsel and being fully advised,

IT IS ORDERED, ADJUDGED AND DECREED that defendants' motion be granted, and that the complaint be and it is hereby dismissed.

/s/ Edward A. Tamm

J

Dec. 16, 1948

* * * *

Filed Jan 3 1949 Harry M. Hull, Clerk

G *Notice of Appeal*

Please take notice that the above named plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the final judgment herein entered December 17, 1948.

December 30, 1948

/s/ F. Trowbridge Vom Baur
F. Trowbridge Vom Baur
Attorney for Appellants
1625 K Street, N. W.
Washington, D. C.

* * * *

F Filed Feb 21 1949 Harry M. Hull, Clerk

Washington, D. C.,
Friday, October 15, 1948

Following the hearing in this matter before Judge EDWARD A. TAMM beginning at 10 o'clock a. m. today—

* * * *

THE COURT. The question before the Court revokes fundamentally about the single question of law, whether the Full Faith and Credit Clause requires a court or an agency of the federal government to take an action which has been prohibited by an act of Congress. The defendant in the present case relies upon Section 42 of the Compensation Act of September 7, 1916, as amended on July 28, 1945, and particularly Chapter 328, 59 Statutes 503, which provides as follows:

“The action of the commission”—Now the Bureau of Employees Compensation—“or its designees in
G allowing or denying any payment under this act shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States or by any court, by a mandamus or otherwise; and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action.”

Plaintiff's learned counsel questions the authority in an act of Congress to confer such power upon an administrative or executive agency of the federal government. The Court refers counsel to a long line of decisions relating to Section 9 of the National Labor Relations Act, and to a Supreme Court decision passing upon a similar delegation of power to the Bituminous Coal Commission, in which it is held such delegation of power to an administrative or executive agency is a constitutional exercise of the powers of Congress.

The question whether the Full Faith and Credit Clause of the Constitution requires the defendant in the present

case to recognize a decision of a New York State court, or requires this Court to exercise jurisdiction upon the basis of the Full Faith and Credit Clause, despite the prohibition by Congress of any review of the action of the defendant, must, in the opinion of the Court, be resolved in favor of the defendant.

The Court accordingly grants the defendant's motion to dismiss.

• • • •

I FEDERAL SECURITY AGENCY
EMPLOYEES' COMPENSATION
APPEALS BOARD

In the matter of an application for review of the decision of the Bureau of Employees' Compensation under the Employees' Compensation Act of September 7, 1916, as amended (or under an extension of such Act).

Maximo Calderon (Aurea Calderon as the widow of
Maximo Calderon) (Appellant)

Navy Department, Navy Yard, Brooklyn, New York
(Employing establishment)

Docket No. 75

OPINION

Filed Feb 21 1949 Harry M. Hull, Clerk.

Before: Henry C. Iler, Chairman

Albert H. Ladner, Jr., Member

Case on hearing October 29, 1947; decided February 13, 1948.

Appearances: F. Trowbridge Vom Baur, Esq.,
for the appellant.

John F. Overend, Esq., for the Director,
Bureau of Employees' Compensation.

BY THE BOARD:

The appeal in the above entitled case is from a compensation order dated June 12, 1947, denying modification of a prior decision, filed by the Director, Bureau of Em-

ployees' Compensation. The sole question involved in the case is whether the Director, as a matter of law, should have found the appellant to be the widow of the deceased employee, within the meaning of the term "widow" as defined in the Employees' Compensation Act.

The case record discloses that the deceased employee, Maximo Calderon, during his lifetime cohabited with several women, three of whom filed claims for compensation as his "widow". These women are known respectively as Celia, Aurea, and Adele. After considering the several claims, the former United States Employees' Compensation Commission on January 31, 1946, filed a compensation order finding therein, in substance, that Celia became the wife of Maximo as the result of a common-law relationship entered into in Puerto Rico in 1925, which continued within the State of New York until the latter part of 1929. A child was born of such relationship.

J Subsequent to the birth of such child, the deceased began cohabiting with Aurea, by whom he had a child on August 10, 1928, and the cohabitation continued until some time between 1929 and 1931,—another child having been born in September, 1929.

On May 13, 1942, following a marriage ceremony, Maximo began living with Adele, with whom he cohabited as in proper marital relationship until his death.

The former Commission had to determine, on the basis of claims filed, whether as a matter of fact and law Maximo was married to any of the three women. Such Commission did determine, on the facts and the law, that the deceased was validly married to Celia according to the common law, by cohabitation and reputation, in the State of New York. Her claim for compensation was rejected for certain statutory reasons not here involved.

The decision in respect to all of the claimants was contained in a compensation order filed January 31, 1946, which apparently was accepted by all claimants, except Aurea.

Such former Commission on June 20, 1946, reviewed its earlier decision and denied modification of the compensation order filed January 31, 1946. Such review was sought in view of the fact that the Appellate Division of the Supreme Court of New York had affirmed the action of the Surrogate's Court of the County of New York, which latter had issued a decree denying an application, filed by Adele, to revoke letters of administration previously granted to Aurea in respect to decedent's estate.

A subsequent application for review was filed with the Bureau of Employees' Compensation on behalf of Aurea, which was predicated upon certain legal theories not previously advanced. Such legal theories were considered by the Director of such Bureau, and in respect to such application the Director on June 12, 1947, filed an order denying modification of the previous decision. In the order denying modification, the Director found as further material facts that Celia Calderon was not a party to the proceeding in the Surrogate's Court of the County of New York, which involved conflicting claims of Adele and Aurea; that Celia had not been served with process in respect to such proceeding, and had not appeared as a litigant therein; and that in such proceeding no issue was raised in respect to Celia's status as widow of the deceased employee. Based upon such additional findings of fact, and after consideration of the matters of law urged on behalf of Aurea, the Director denied the application for modification holding (1) that the claimant Aurea was not, as a matter of law, the widow of the deceased employee, and (2) that the judgment of the Surrogate's Court is not binding upon the Bureau in respect to the Bureau's determination upon the status of Celia.

The sole issue before the Board is whether or not the claimant Aurea presented any matter to the Bureau, in connection with the review had before it, which should have resulted in a finding that Aurea was the lawful widow of Maximo. There does not appear to have been

any question with respect to the facts involved. They were initially determined by the former Commission and not disputed subsequent to such determination. The facts briefly show, as above indicated, that Celia and Maximo entered into a relationship in Puerto Rico in 1925, K that they came to New York in October, 1926, and continued to reside together in New York as man and wife,—which continued until 1929. There was nothing in this relationship very much different from that involved in the relationship with Aurea. In both instances the fact of birth of a child was publicized in notices of baptism, etc., in which the parties held themselves out as married. The Board is satisfied that on the side of fact there is as much factual material to establish common-law marriage with Celia as there is with Aurea. The Board, however, does not have to determine any disputed question of fact in respect to such cohabitation; It limits its inquiry solely to the question whether there is any error of law in the decision of the Director contained in the compensation order filed June 12, 1947.

In respect to such decision the appellant urges (1) that the decision of the Surrogate's Court in New York constitutes a judgment *in rem* and binds everyone, including the Bureau, (2) that such judgment (which found Aurea to be the widow) is entitled to full faith and credit, and (3) that such judgment should be recognized under the comity rule.

As to the first ground, the proceeding in the Surrogate's Court related essentially to the disposition of an estate. Such judgment, as a judgment *in rem*, is entitled to be regarded as conclusive only in respect to such matters and such property as the Surrogate's Court properly had within its jurisdiction. The judgment of the Surrogate's Court is not conclusive upon any matter of law which does not concern the disposition of the estate of the deceased. The death benefit under the compensation law is not a part of the decedent's estate.

The Surrogate's Court had no jurisdiction over the per-

son of Celia, nor was Celia a voluntary party to the proceeding before it, or otherwise properly in court. Whatever effect the judgment had with respect to matters affecting Aurea and Adele, such judgment was of no effect on any matter not growing out of the disposition of the estate of the deceased. The former Commission had the right and duty to determine for the purposes of the Federal statute which claimant was the lawful widow. It had jurisdiction in respect to three claims and it necessarily had to make its own, independent, decision. Having performed this function, its decision could have been attacked only by asserting error in respect to the factual basis in support thereof, or upon the general law applicable to common-law marriages,—more particularly as they were earlier recognized in the State of New York.

To permit the result of the contest, in which Celia was not a party, to control the result under the Federal statute would obviously open the door in other cases to the possibility of perpetrating fraud upon innocent persons. Whatever the effect of the Surrogate's decision may be in respect to matters pertaining to the decedent's estate as a judgment *in rem*, the judgment is not binding upon the status determination made by the Bureau or the Board. For cases see *Becher v. Contoure Laboratories*, 279 U. S. 388; *Werner v. Fraternal Bankers' Reserve Soc.*, 172 Iowa 504; *Wheelwright v. Depeyster*, 1 Johns (N. Y.) 471; *Thormann v. Frame*, 176 U. S. 350; *Battalico v. Knickerbocker Fireproofing Co.* (N. Y. 250 App. Div. 258; *Boswell v. Otis*, 9 How. (U. S.) 336; *Manson v. Williams, Trustee in Bankruptcy*, 213 U. S. 453.

(If the Surrogate's Court had had before it the widow Celia, and had considered all of the factual elements in relation to her cohabitation, it is likely that a different result would have been reached in the proceedings in that Court. This possibility is more than suggested in the brief filed by Aurea in the New York Supreme Court.)

L On the second question, namely, whether the Surrogate's decision is entitled to full faith and credit,

it is sufficient to point out that the Constitutional provision in respect thereto, and the legislative enactments implementing the Constitutional provision, apply only to statutes and records of judicial proceedings in the States and Territories. These requirements have no application to the official acts performed by a Federal administrative body: *Davis v. Elmira Savings Bank*, 161 U. S. 275; *McClellan v. Chipman*, 164 U. S. 347; *National Bank v. U. S. Fidelity and Guaranty Co.*, 71 F. (2d) 618. Moreover, the full faith and credit clause does not require the enforcement of every right conferred; *Milwaukee County v. White*, 296 U. S. 268; *Alaska Packers' Association v. Industrial Accident Commission*, 294 U. S. 532. The Federal administrative agencies must, as a matter of necessity, be permitted to determine the status of individuals under the statutes which they administer, and this imposes the necessity independently of determining the facts and applying the law to the facts. The administrative agencies of the Government are not required by any law, brought to the Board's attention, to rest upon the decision of a State tribunal in proceedings of such limited scope as the disposition of the estates of decedents.

The third ground, namely, comity, in essence is a plea for a policy of recognition, and can not be claimed as a matter of right. Comity is a recognition of the law of a foreign State, applied in conflict of laws situations; it is usually applicable in the recognition of rights acquired under foreign law. There could be no conflict of laws in respect to the statutes of any State and the statutes of the United States where the subject-matter is exclusively Federal in nature. The appellant is not suggesting that she has acquired a right to the workmen's compensation benefit by reason of any law of the State of New York. She merely is seeking to have the Board recognize, as a matter of law, that she has status as widow of the deceased, but in so doing she urges that the determination made by the United States under its own statute, and on

facts presented to it, should yield on the basis of comity to the decision of a State tribunal, which did not have the same subject-matter before it, the same statute, nor the same parties. The Board is unaware of any rule of law requiring an administrative agency of the United States to accept the decision of a State tribunal on the basis of comity,—particularly where in respect to a decision under the Federal statute, the processes of and parties before the State tribunal cause an inherently unsatisfactory and inconclusive basis upon which to decide a question of status under the Federal Act. The Board makes no observation as to what the proper rule of law should be if there had been no factual showing whatsoever before the Board in respect to the marital status of Celia.

The Board finds no error in the compensation order filed June 12, 1947, to which the appeal relates.

February 13, 1948

M UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Aurea Calderon, et al, Plaintiffs,

vs.

Federal Security Administrator, Defendants.

Civil Action No. 1568-48

(Excerpts from Civil Docket Entries)

<i>Date</i>	<i>Proceedings</i>	<i>Fees</i>	<i>Total</i>
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• • • • •

1948

Dec. 17 Judgment granting deft's motion
to dismiss. Complaint dismissed.

Tamm, J. (N)

1949

Jan. 3 Notice of appeal by plttf. (copy
to Geo. M. Fay)

3 Additional deposit for costs by
Vom Baur

5.00

Feb. 21 Stipulation of record on appeal.

1 Filed Apr 15 1948 Harry M. Hull, Clerk.

Civil Action No. 1568-'48

* * * *

Complaint for a Declaratory Judgment and an Injunction

Plaintiffs, by their attorney, F. Trowbridge vom Baur, complaining of the defendants, allege:

1. On November 12, 1944, one, Maximo Calderon, died. At the time of his death he was an employee of the United States employed at the United States Navy Yard in Brooklyn, New York, and he died as a result of injuries sustained in the course of such employment.

2. On November 29, 1944 Letters of Administration were issued by the Surrogates Court of the State of New York, New York County, a court of competent jurisdiction, to the plaintiff Aurea Calderon herein, as the lawfully wedded wife of the deceased Maximo Calderon. Thereafter one, Adela Cassas Calderon, petitioned for the revocation of the said Letters of Administration and for
2 her appointment as such administratrix in the place and stead of the plaintiff, Aurea Calderon herein, on the ground that she, Adela Cassas Calderon and not the plaintiff Aurea Calderon herein, was the lawfully wedded wife of the deceased at the said time of his death. The issue raised by said petition thereafter duly came on for trial before the Honorable James A. Delehanty, Surrogate of the said Surrogates Court of the State of New York on March 22, 1945, June 19th and June 20th, 1945. After hearing the evidence and due deliberation, the said court duly held that the plaintiff Aurea Calderon herein was the lawful surviving spouse of the said deceased Maximo Calderon, thereby determining the status of the said deceased, Maximo Calderon, and also of the plaintiff Aurea Calderon herein. The said Court further duly held that the plaintiffs Ruby Calderon and James Calderon herein, were the lawful issue of marriage be-

tween the said Maximo Calderon, deceased, and the plaintiff Aurea Calderon herein, thereby also determining the status of the plaintiffs Ruby Calderon and James Calderon. The said Court thereupon dismissed the said petition for revocation of the said letters of administration, and in all respects confirmed the right of the plaintiff Aurea Calderon herein to letters of administration "as the surviving spouse of the deceased Maximo Calderon." The decree of the said Court so holding is dated July 13, 1945 and was entered in the office of the Clerk of the Surrogates Court of the State of New York, New York County, on July 14, 1945. A copy thereof is attached hereto as Exhibit A. Upon appeal the said decree was affirmed by the Appellate Division of the Supreme Court of the State of New York, First Department. It is still in full force and effect.

3 3. Thereafter the plaintiff Aurea Calderon herein duly applied to the U. S. Employees Compensation Commission and to its successor, the Bureau of Employees Compensation of the defendant Federal Security Agency, for compensation as the widow of said Maximo Calderon deceased. The said U. S. Unemployment Compensation Commission; its successor, the Director of the Bureau of Employees Compensation of the defendant, Federal Security Agency; and on appeal the defendant Employees Compensation Appeals Board, all held that the plaintiff Aurea Calderon herein is not the widow of the said Maximo Calderon deceased, and on that ground refused to award her compensation. A copy of the determination and order of the said defendant Employees Compensation Appeals Board, dated February 13, 1948, in which "The Board determines that as a matter of law the claimant Aurea Calderon is not the widow of the deceased employee" is attached hereto as Exhibit B.

4. Plaintiff Aurea Calderon herein is the lawful surviving spouse and widow of said deceased, Maximo Calderon. Plaintiffs Ruby Calderon and James Calderon

are the lawful issue of marriage between the said deceased, Maximo Calderon, and the plaintiff, Aurea Calderon, herein.

5. The defendants herein are not above the law but are subject to it; and they are legally bound to give full faith and credit to the said decree and judgment of the court of the State of New York.

6. The said action of the defendants violates the Full Faith and Credit clause of the Constitution of the United States and is contrary to law; it deprives the plaintiffs

herein of their constitutional rights in the said decree and judgment of the Court of the State of New York as a decree and judgment entitled to full faith and credit in every jurisdiction and office of the United States; it has cast and is still casting a cloud on their status and reputation; and it has diminished and is still diminishing their standing in the community, all to their irreparable injury and damage. The plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

A. Declaring that the said judgment of the said Court of the State of New York is binding upon the defendants and each of them;

B. Declaring that plaintiff Aurea Calderon herein is the lawful surviving spouse and widow of the said deceased, Maximo Calderon;

C. Declaring that plaintiffs Ruby Calderon and James Calderon herein are the lawful issue of marriage between the said deceased Maximo Calderon and the plaintiff Aurea Calderon herein.

D. Restraining the defendants, and each of them, from refusing to pay or to direct the payment of compensation to the plaintiff Aurea Calderon herein on the ground that she is not the lawful surviving spouse and widow of the said deceased, Maximo Calderon.

E. For such other, further and different relief as to the Court may seem just and proper;

F. Against the defendants for the costs and disbursements of this action.

F. TROWBRIDGE VOM BAUR

• • • •

5 Filed Apr 15 1948 Harry M. Hull, Clerk.

Exhibit A

AT the Surrogate's Court of the County of New York, at the Hall of Records in said County on the 13th day of July, 1945.

Present:

Honorable James A. Delehanty, Surrogate.

In the Matter of the Application of

ADELA CASSAS CALDERON

to revoke Letters of Administration issued to

AUREA CALDERON

as Administratrix of the goods, chattels and credits of
MAXIMO CALDERON, Deceased.

A-3029-1944

*Decree Denying Application to Revoke Letters of
Administration*

Letters of Administration, with limited authority, having been issued by this Court on November 29th, 1944, to the above-named AUREA CALDERON, as the lawfully wedded wife of the deceased, MAXIMO CALDERON, who died on November 12th, 1944, and an application having been made by petition duly made and filed in this Court on December 22nd 1944, by the above named petitioner ADELA CASSAS CALDERON, for the revocation of the said Letters of Administration and for the appointment of the said petitioner as such Administratrix in the place and stead of the said AUREA CALDERON, on the ground that she, the said petitioner, and not the said AUREA CALDERON, was the lawfully wedded wife of the deceased at the said time of his death, and

An order restraining the said AUREA CALDERON from further acting as such Administratrix pending the determination of the said application for revocation having also been granted and issued by this Court on the 22nd day of December, 1944,

6 And the said AUREA CALDERON, having in accordance with the aforesaid petition, been cited to appear and show cause before this Court on the 30th day of January, 1945, why the said Letters of Administration so issued to her should not be revoked, and why they should not be issued to the said petitioner, and the said citation and restraining order having been filed in this Court by the respondent, AUREA CALDERON, on January 30th, 1945, and the application having thereafter duly come on for hearing before me on the 22nd day of March, 1945, at which time LESTER H. SISSKIN, Esq., appeared as the attorney for the said petitioner, and HARRY WALLACH, Esq., as attorney for the respondent Administratrix, and after the taking of testimony for both sides, the said hearing was on that day adjourned, and further formal hearings subsequently resumed and testimony again taken for both petitioner and respondent on the 19th and 20th days of June, 1945, at which time the petitioner was represented by RAPHAEL H. BEAUDUY, Esq., as her attorney, and the respondent by HARRY WALLACH, Esq., as previously.

And the Court, after hearing all the aforesaid testimony, and after due deliberation, having found:

1. That the respondent AUREA CALDERON had validly intermarried non-ceremonially with the deceased in 1927;

2. That the deceased had subsequently made formal recognition of the two children of this marriage as his lawful issue; and

3. That the said deceased was still married to the respondent, and was therefore incapable of entering into

a valid ceremonial marriage with the petitioner, as claimed, on May 13th 1942;

And the Court having rendered and filed its written decision accordingly, it is therefore now

ORDERED, ADJUDGED, AND DECREED, that the aforesaid application for the revocation of the Letters of Administration, with limited authority, herein previously issued to the said respondent, AUREA CALDERON, be, and hereby is, dismissed on the merits, and it is further

7 ORDERED, ADJUDGED, AND DECREED, that the order dated the 22nd day of December, 1944, restraining the said Administratrix, and suspending her powers to act as such, be, and hereby is, in all respects, vacated, and it is further

ORDERED, ADJUDGED AND DECREED, that the right of the said respondent, AUREA CALDERON, to Letters of Administration as the surviving spouse of the deceased, MAXIMO CALDERON, be, and hereby is, in all respects, confirmed.

JAMES A. DELEHANTY
Surrogate.

8 *Exhibit B*

(United States Employees' Compensation Act)
Federal Security Agency
Employees' Compensation Appeals Board

In the matter of an application for review of the decision of the Bureau of Employees' Compensation under the Employees' Compensation Act of September 7, 1916, as amended (or under an extension of such act).

Maximo Calderon (Aurea Calderon as the widow of
Maximo Calderon) (Appellant)
Navy Dept., Navy Yard, Brooklyn, New York
(Employing establishment)
Docket No. 75

Order

Upon consideration of the application for review filed in the case of Maximo Calderon, Case No. X-25040, in the Bureau of (injured or deceased employee) Employees' Compensation, and after review of such case upon the issues presented before it, the Board makes the following

DETERMINATION

The issue raised in this appeal is directed to the findings of the Director, Bureau of Employees' Compensation, in respect to the question whether the claimant Aurea, as a matter of law, is the widow of the deceased employee. The Board determines that as a matter of law the claimant Aurea is not the widow of the deceased employee. and the following

ORDER

The order denying modification of decision, filed by the Director, Bureau of Employees' Compensation, on June 12, 1947, is affirmed. The case file will be returned to the Director, Bureau of Employees' Compensation.

EMPLOYEES' COMPENSATION APPEALS BOARD:

Henry C. Iler (sgd)

Chairman

Albert H. Ladner, Jr. (sgd)

Member

Date February 13, 1948

9 Filed Jun 18 1948 Harry M. Hull, Clerk.

• • • •

Defendants' Motion to Dismiss Complaint

Defendants move the court to dismiss the action because the Court lacks jurisdiction of the subject matter of the action in that there is no justiciable right which could support application for the relief sought; for the further

reason that the defendants are, respectively, officers and agencies of the United States of America, and this suit is in substance an action against the United States of America, which has not consented to be sued in such matters and has not waived its immunity from suit; and for the further reason that judicial action in respect to the subject matter is forbidden by law.

/s/ George Morris Fay
George Morris Fay
United States Attorney
Attorney for Defendants

No. 10,151

APPELLANTS' BRIEF

United States Court of Appeals

For the District of Columbia Circuit

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,

Appellants,

vs.

MAURICE J. TOBIN, SECRETARY OF LABOR, and
EMPLOYEES COMPENSATION APPEALS BOARD,

Appellees.

Appeal from the United States District Court
for the District of Columbia

F. TROWBRIDGE VOM BAUE
Attorney for Appellants

F. TROWBRIDGE VOM BAUE
J. PAUL MARSHALL
Of Counsel

APPELLANTS' QUESTIONS PRESENTED

This appeal presents the question whether a judgment of a competent court of jurisdiction of the State of New York, determining the status of the plaintiffs, must be given Full Faith and Credit by officials in the Executive Branch of the Government; or whether, unlike judges in the courts, officials in the Executive Branch may disregard it.

The appellees contend, not only that they need not give Full Faith and Credit to the New York judgment, but that Congress has, by statute, granted them immunity from enforcement of the Full Faith and Credit Clause of the Constitution. We submit that the statute in question provides no such thing; but that if it should be so construed, it would be void as beyond the constitutional powers of Congress. Thus, there would be presented the question whether Congress may grant immunity to disregard the Constitution, particularly the Full Faith and Credit Clause thereof.

For these plaintiffs, this appeal presents the crucial question whether, after a competent New York court has decreed the plaintiff Aurea and her children to be, respectively, surviving spouse and legitimate issue, officials in the Executive Branch may, nevertheless, stigmatize the one as having merely lived in sin, and the children as bastards.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,151

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,

Appellants,

VS.

MAURICE J. TOBIN, SECRETARY OF LABOR, and
EMPLOYEES COMPENSATION APPEALS BOARD,

Appellees.

Appeal from the United States District Court
for the District of Columbia

APPELLANTS' BRIEF

JURISDICTIONAL STATEMENT

This brief is submitted on appeal from the judgment of the United States District Court for the District of Columbia, dismissing the complaint herein (2A). This court has jurisdiction pursuant to 28 US Code 1291.

The complaint herein was dismissed on motion, without a trial, by the learned Justice Tamm, in an oral opinion announced from the bench immediately upon the conclusion of argument by counsel. His opinion is set forth in the Joint Appendix (3A).

STATEMENT OF THE CASE

The New York Judgment

The Complaint alleges that one Maximo Calderon died on November 12, 1944. At the time of his death he was an employee of the United States, employed at the United States Navy Yard in Brooklyn, and he died as a result of injuries sustained in the course of such employment. (11A)

Thereafter there was a fight in the Surrogate's Court of the State of New York, New York County, a court of competent jurisdiction, as to which of three women was the lawfully wedded wife of the deceased at the time of his death. After various legal proceedings, including a trial, the Surrogate's Court entered a judgment adjudicating the Plaintiff Aurea Calderon herein to be the lawful surviving spouse of the deceased, and the other Plaintiffs herein to be the lawful issue of marriage between the deceased and said Plaintiff. That judgment was entered in the office of the Clerk of the Surrogate's Court on July 14, 1945, and upon appeal the said judgment was affirmed by the Appellate Division of the Supreme Court of the State of New York, First Department. It is still in full force and effect, and a copy is attached to the Complaint as Exhibit A. (14A)

In its opinion the Court pointed out that, after their marriage, Maximo Calderon had deserted the Plaintiff to

“philander” with one of the other claimants. (See Surrogate Delehanty’s opinion in the Appendix hereto).

The Appellees Refuse To Give Full Faith and Credit To The New York Judgment

The Plaintiff Aurea duly applied to the United States Employees’ Compensation Commission and its successor for compensation, as the lawful surviving spouse and widow of the deceased. But the defendant Employment Compensation Appeals Board actually decided on February 13, 1948, that “the Board determines that as a matter of law that claimant Aurea Calderon is not the widow of the deceased employee.” The Board paid no attention to the New York judgment. It threw the New York judgment out the window, as having no legal effect. It asserted that it was entitled to ignore, revise and reverse that judgment, and even said that one of the other women was the surviving spouse of the decedent. No compensation was paid to anyone as a result.

In ignoring, revising and reversing the New York judgment, the defendants violated their duties under the Full Faith and Credit Clause of the Constitution. They deprived the Plaintiffs herein of their constitutional rights in the New York judgment as a judgment entitled to Full Faith and Credit in every jurisdiction and office in the United States. And the action of the defendants has considerably upset their lives. It has cast and is still casting, a cloud on their status and reputation and it has diminished their standing in the community. (Par. 6)

What Is The Status Of The Plaintiffs?

In short, this case presents a controversy, created by the defendants, as to just what is the status of the Plaintiffs. Is the Plaintiff Aurea Calderon herein the lawful

surviving spouse of the deceased and are the other Plaintiffs the lawful children of the deceased, as the New York Court held? Or was Aurea merely living in sin, and are her children only bastards? And may the defendants ignore, revise and reverse the New York judgment as something without any legal effect at all and purport to change the Plaintiff's status from one of legitimacy to one of illegitimacy? However we look at it, the action of the defendants has created a disturbing and crucial controversy over the status of the Plaintiffs, which it is the purpose of this litigation to settle.

Accordingly, the Plaintiffs demand a declaratory judgment declaring that the New York judgment is binding upon the defendants, that the Plaintiff Aurea Calderon is the lawful surviving spouse and widow of the deceased, and that the other Plaintiffs are the lawful issue of the deceased; and restraining the defendants from refusing to pay compensation to the Plaintiff Aurea Calderon on the ground that she is not the lawful surviving spouse and widow of the deceased.

The Appellees' Contention: That They Are Not Bound by the Full Faith and Credit Clause

The Board, in its opinion herein, took the flat position that it is not bound by the Full Faith and Credit Clause. Thus, said the Board (8A):

“On the second question, namely, whether the Surrogate's decision is entitled to Full Faith and Credit, it is sufficient to point out that the Constitutional provision in respect thereto, and the legislative enactments in presenting the Constitutional provision, apply only to statutes and records of judicial proceedings in the States and Territories. These requirements have no application to the official acts performed by a Federal administrative body.”

The bold character of the appellees' position is graphically shown in the Joint Appendix. While the New York

judgment specifically finds that Aurea and the deceased "validly intermarried" in 1927, and that she is his "surviving spouse" (5A, 16A), the appellees actually assert "that as a matter of law the claimant, Aurea is not the widow of the deceased employee". (17A)

THE STATUTE INVOLVED

28 US Code, Sec. 1738 (formerly Sec. 687) provides as follows:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

The foregoing statutory provision was passed pursuant to the Full Faith and Credit Clause of the Constitution embodied in Art. IV, Sec. 1, which is quoted in Point Two hereof.

While the Appellants do not believe that any other statutes are involved, the Appellees claimed in the court below, and the learned Justice below held, that Section 42 of the Compensation of September 5, 1916, as amended on July 29, 1945, contained in 5 US Code 793, is applicable to this case. The applicable portion of this statute is set forth in Point Four hereof.

STATEMENT OF POINTS

Point One—The New York Judgment is a Judgment *in rem* and so is binding upon all the world.

Point Two—The New York Judgment is also binding on the Defendants under the Full Faith and Credit Clause.

Point Three—A Judgment entitled to protection under the Full Faith and Credit Clause is binding on Government Officials as well as on the Courts.

Point Four—Section 42 of the Compensation Act has no Application to this suit.

Point Five—If we were to assume that Sec. 42 of the Compensation Act could be construed as purporting to deprive this court of power to decide this controversy, it would be Unconstitutional.

Point Six—The Appellees are acting illegally and the relief demanded in the complaint should be granted.

Point Seven—The Judgment should be reversed.

SUMMARY OF ARGUMENT

The New York judgment, handed down by a court of competent jurisdiction, decreed the status of complainants as wife and legitimate issue, respectively, of the deceased Maximo Calderon. The New York judgment specifically found as a fact that the plaintiff Aurea and the deceased “validly intermarried” and decreed her to be his “surviving spouse”. But the Appellees claim that they are not bound by this judgment, that the plaintiff Aurea is not the surviving spouse of the decedent and that the children are illegitimate.

The New York judgment is a judgment *in rem*, similar to a divorce decree, and so is binding on all the world, on people in foreign countries as well as in the United States. And in the United States it is binding on all sister states and on all the courts of the United States, with an additional force, ironbound in character, by virtue of the Full Faith and Credit Clause of the Constitution. This point is settled beyond all possible doubt, we submit, by the first *Williams* case, *Williams v. North Carolina*, 317 US 287.

The claim of the Appellees is, in essence, a claim that they, as officials in the Executive Branch of the Government, are above the law. They do not deny that the New York judgment is binding on all the judges of the courts of the country, but they deny flatly that it is binding on them. Their position, we submit, is contrary to our system of government and our basic concept of the supremacy of law that government officials as well as the rest of the people are subject to the law of the land.

The Appellees claimed in the court below not only that the Full Faith and Credit Clause was not binding on them, but that Congress had granted them immunity from enforcement of the Full Faith and Credit Clause. They point to a 1945 amendment to the Compensation Act which provides that the action of the Commission in allowing or denying a payment shall not be "subject to review . . . by any court by mandamus or otherwise". We submit, however, that this statute has no application whatever to the instant situation. But, if it should be considered to have any application, or in any way purport to grant immunity to government officials from enforcement of the Full Faith and Credit Clause, then it would be invalid as beyond the Constitutional powers of Congress. It needs no argument to demonstrate that Congress has no power to legislate the Full Faith and Credit Clause out of the Constitution or to prevent the Judicial Power from enforcing it.

ARGUMENT

POINT ONE

The New York Judgment Is a Judgment in Rem and So Is Binding Upon All the World

The New York judgment is an adjudication of the status of the Plaintiffs. In this respect it is the equivalent of a decree of divorce or any other judicial decree establishing a person's status. As such it is binding not only upon the parties to the litigation, but upon the entire world, including the defendants.

Section 74 of the Restatement of the Law of Judgments, issued by the American Law Institute, provides in part as follows:

“s. 75. *Proceedings with Respect to Status.*

“(1) In a proceeding in rem with respect to a status the judgment is conclusive upon all persons as to the existence of the status.

“Comment:

“a. *Effect of judgment on the status.*

When in a proceeding for the creation or termination or judicial determination of a status a competent court has after proper notice given a valid and final judgment, the judgment is binding on all persons in the world as to the existence of the status. The judgment is not subject to collateral attack by anyone, unless the judgment was void because the court did not have jurisdiction over the status or was not competent to render the judgment or there was a failure to give proper notice and opportunity to be heard. (See a. 33.) As far as the status is concerned, the judgment is binding not only on persons who were subject to the jurisdiction of the court which rendered the judgment, but also on persons not personally subject to the jurisdiction of the court.”

The texts and cases are legion which so hold, applying the rule to any competent judicial pronouncement which determines a person's *status*.

33 Corpus Juris 1063.

34 " " 1172, 1173.

1 " " 1041, 1042.

1 C. J. S. 944, 1148.

Christianson vs. Kings County, 239 U. S. 356.

O'Connor vs. Stanley, 54 F. (2d) 20—CCA 8.

Galpin vs. Page, 9 F. Cases No. 5, 206-3 Sawy. 93, 124.

Cunningham vs. Shanklin, 60 Cal. 118, 125.

Reidy vs. Chicago C. & O. Ry. Co., S. Ct. Iowa, 249 N. W. 347.

Woodruff vs. Taylor, 20 Vt. 60, 73.

Atkins vs. Atkins, 9 Neb. 191, 202; 2 N. W. 466.

In Re Horton's Will, 217 N. Y. 363, 111 N. E. 1066.

Roseman vs. Fidelity & Deposit Co. of Md., 154 Misc. 320.

Fischer vs. Sklenar, 163 N. W. 861, S. Ct. Nebraska.

Brotton vs. Donovan, 224 N. W. 270, S. Ct. Minn.

Dulin vs. McCaw, 39 W. Va. 721, 727; 20 S. E. 681.

Cross vs. Armstrong, 10 N. E. 160, 44 Ohio St. 613.

Stropper vs. McCauley, 45 Ga. 74.

Hobbs vs. Lenon, 191 Ark. 509, 87 S. W. (2d) 6, 11.

In *Cunningham vs. Shanklin*, 60 Cal. 118, *Supra*, the court, among other things, said:

"Proceedings *in rem* include not only those instituted to obtain decrees or judgments against property, as forfeited in the Admiralty or the English Exchequer, or as prize, but also suits against property to enforce a lien or privilege in the Admiralty Courts, and suits to obtain the sentence, judgment or decree of other Courts upon the personal status or relations of the party, such as marriage, divorce, bastardy, or the like." (1 Bouvier's Law Dict. 693) Decisions in such cases are "binding and conclusive, not only upon the parties actually litigating in the cases, but upon all others. * * * Everyone who can possibly be affected by the decision has a right to appear and assert his own rights, by becoming an actual party to the proceedings," etc.

1 Greenl. Ev. s. 525.

In the leading case in the United States Supreme Court of *Christianson vs. King*, 239 U. S. 356, *supra*, the plaintiff sued to recover certain lands as the heir of one Thompson who had died some forty years before. In a previous probate proceeding Thompson's property had been distributed to the County of King upon a finding: "There being no heirs of said decedent . . ." Plaintiff had not been a party to the probate proceeding. Judgment was given for the defendant on the ground that the probate proceeding was one *in rem* with the probate decree binding on all the world as to the status of the plaintiff as a person who was not an heir of Thompson. The opinion of Mr. Justice Hughes (later Chief Justice), among other things, said:

"The court, after appropriate notice, did determine that there were no heirs and its decree being the act of a court of competent jurisdiction under a valid statute bound all the world including the plaintiff in error. It cannot be regarded as open to attack in this action."

In *Reidy vs. Chicago B. & Q. Ry. Co.*, S. Ct. Iowa, 249 N. W. 347, *supra*, the court, among other things, said:

"It seems to be generally settled that where the probate court is given jurisdiction by statute to decide certain matters, all questions necessarily passed on by that court in arriving at its decisions are finally adjudicated, and cannot be collaterally attacked in an independent proceeding. *Christianson v. County of King*, 239 U. S. 356, 36 S. Ct. 114, 60 L. Ed. 327."

For the reasons stated a judgment *in rem* of a foreign country is binding upon jurisdictions in the United States. See 34 C. J. 1163.

POINT TWO

The New York Judgment Is Also Binding on the Defendants Under the Full Faith and Credit Clause

Article IV, Section 1, of the Constitution provides as follows:

“Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other States. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof.”

It is well settled that Full Faith and Credit must be afforded to a state court's judgment when brought into relevancy in a Federal tribunal. *United States vs. Silleman* (CCA 3, 1948), 167 F. (2) 607, cert. den. 335 US 825. *Jarrard vs. Southeastern Shipbuilding Corporation* (CCA Ga. 1947), 163 F. (2) 960; *Huron Holding Corporation vs. Lincoln Mine Operating Company* (1941), 312 US 183, and cases cited. And the courts of the District of Columbia are bound equally with the courts of the states to observe the commands of the Full Faith and Credit Clause. *Suydam vs. Ameli* (1946), 46 A. (2d) 763.

The purpose of the Full Faith and Credit Clause is to give “nationwide application” to “rights judicially established” in one state. *Magnolia Petroleum Company vs. Hunt* (1943), 320 US 430. 28 US Code 687 and 688 were enacted to carry into effect this provision of the Federal Constitution. *Staton vs. Hall* (1931), 172 Ga. 675, 158 S. E. 747, appeal dismissed 284 US 691.

Finally, a judgment of divorce by a court of competent jurisdiction, is specifically binding on all the other 47 states under the Full Faith and Credit Clause. *Williams vs. North Carolina* (1942), 317 US 287. And the holding in the first *Williams* case is aptly summed up in the second *Williams* case (1945), 325 US 226, 232, as follows:

“But insofar as a divorce decree partakes of some of the characteristics of a decree in rem, it is misleading to say that all the world is party to a proceeding in rem. See *Brigham v. Fayerweather*, 140 Mass. 411, 413, 5 N. E. 265, quoted in *Tilt v. Kelsey*, supra, 207 U. S. at page 52, 28 S. Ct. at Page 4, 52 L. Ed. 95. All the world is not party to a divorce proceeding. What is true is that all the world need not be present before a court granting the decree and yet it must be respected by the other forty-seven States provided—and it is a big proviso—the conditions for the exercise of power by the divorce-decreeing court are validly established whenever that judgment is elsewhere called into question. In short, the decree of divorce is a conclusive adjudication of everything except for jurisdictional facts upon which it is founded . . .”

The New York judgment in the instant case is equally conclusive, for it fully adjudicates the marital status of the parties. It is thus entitled to Full Faith and Credit in every court and office in the land.

POINT THREE

A Judgment Entitled to Protection Under the Full Faith and Credit Clause Is Binding on Government Officials as Well as on the Courts

The appellees did not deny, in the proceedings below, that the New York judgment is binding on every court in the land. But they assert that it is not binding upon them because they are not judges but government officials, “the Bureau or the Board” (8A, 9A).

However, they do not cite any cases which even remotely so indicate and it seems perfectly obvious that government officials in the Executive Branch are not above the law and are not in any sense superior to the judges of the courts.

The Full Faith and Credit Clause never intended that a State judgment should be given nationwide application in all the courts of the land, yet leaving government officials in the Executive Branch of the Federal government free to ignore it.

POINT FOUR

Section 42 of the Compensation Act Has No Application to This Suit

The Compensation Act of September 5, 1916, was amended on July 29, 1945, and now provides in part as follows: (5 USCA 793)

“The action of the Administrator or his designees in allowing or denying any payment under sections 751-791 and 793 of this title shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action.”

The defendants asserted below that this provision of the statute “precludes the court from reviewing the decision” which the defendants have already made in this case.

The provision of the statute here in question was slipped over on Congress in 1945 on the recommendation of Jewell W. Swofford, then Chairman of the United States Employees Compensation Commission. He explained the amendment to the Act in a letter to the Chairman of the Committee on Education and Labor of the Senate dated April 28, 1945, which was incorporated in Senate Report 421, accompanying the bill S. 714, later enacted into law as the amendment involved.

There is no report in the House, and neither Mr. Swofford nor the Senate Report ever mentioned the pro-

vision here in question. On the contrary, the purpose of Section 4, which added the amendment here involved, was advertised as to "facilitate the final settlement of claims." (P. 6)

The present suit does not seek to "review" action "allowing or denying any payment", but rather to obtain a declaratory judgment as to plaintiffs' status which has so seriously been placed in jeopardy.

This is not "review" but "judicial control" of unlawful acts of government officials. *Siegel v. United States* (D. C. N. Y. 1949) 87 F. Supp. 555.

POINT FIVE

If We Were to Assume That Sec. 42 of the Compensation Act Could Be Construed as Purporting to Deprive This Court of Power to Decide This Controversy, It Would Be Unconstitutional

The appellees here argue that, not only may they throw the Full Faith and Credit Clause out of the window, but that Congress has granted them immunity from judicial enforcement of the clause.

We submit that merely to state this contention is to demonstrate its utter absurdity. Congress may not authorize any one to disregard the Constitution or to be immune from judicial enforcement thereof.

The fundamental difficulty with the defendants' position is that any such law of Congress would be unconstitutional for two reasons: (1) it would deprive the Plaintiffs of their Constitutional rights in the judgment under the Full Faith and Credit Clause; and (2) it would seek to invade the Constitutional power of the judiciary under Article III of the Constitution.

A. *So Construed, the Act Would Deprive the Plaintiffs of Their Constitutional Rights Under the Full Faith and Credit Clause.*

It needs no argument to demonstrate that the Constitution is completely superior to any act of Congress. Congress simply does not possess the power, in our system of government, to change or amend the Constitution. Rather the Constitution may only be amended through certain procedure, and any act of Congress which would seek to limit or amend the provisions of the Constitution is invalid. This includes the Full Faith and Credit Clause as well as the other provisions of the Constitution. That is to say, Congress just does not possess the power to pass an act which would authorize the defendants to deprive the Plaintiffs of their Constitutional rights under the Full Faith and Credit Clause in the said judgment.

It is perfectly obvious that if either one of the other two women should bring any kind of a judicial proceeding in any court in the United States, claiming to be the widow of the deceased, the Plaintiff Aurea Calderon herein could successfully plead the New York judgment as a defense under the Full Faith and Credit Clause. Likewise, in any litigation in any court anywhere in the United States which questioned the status of the Plaintiffs Ruby and James Calderon as the lawful issue of marriage between the deceased and the Plaintiff Aurea Calderon, those Plaintiffs could successfully plead the New York judgment. The Plaintiffs have perfectly clear, legal, and in fact, constitutional rights in the New York judgment as a judgment entitled to full faith and credit in every jurisdiction and office in the United States. See *Embry vs. Palmer*, 107 U. S. 3, *Davis vs. Davis*, 305 U. S. 32, *California ex rel. McColgen vs. Bruce*, 129 F. (2d) 421, *Hancock Nat. Bank vs. Farnum*, 176 U. S. 640.

The action of the defendants in asserting that Plaintiff Aurea Calderon is not the lawful surviving spouse of the

deceased and that the other Plaintiffs are not his lawful children, cannot be given any effect without violating the Plaintiffs' Constitutional rights in the said judgment.

B. *If Section 402 of the Compensation Act Were Construed as Intended to Preclude Judicial Determination of This Controversy Concerning Plaintiffs' Status, It Would Be Unconstitutional as a Curtailment of the Judicial Power Conferred Upon This Court by Article III of the Constitution.*

Article III of the Constitution, Sections 1 and 2 state in part as follows:

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish" . . .

"Section 2. The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . ."

The Complaint demonstrates that this is a case and controversy arising under the Constitution and Laws of the United States. This is something which the defendants do not dispute. And it may be pointed out here that it is a controversy which is of very considerable importance to the Plaintiffs inasmuch as it concerns their status under the Constitution as wife and child, respectively. Under Article III of the Constitution the judicial power extends such a case or controversy, and Congress simply does not have power to block off its exercise.

Ex Parte Wisner (1906) 203 U. S. 449, 51 L. Ed. 246
Stevenson vs. Fain (1904) 195 U. S. 107, 49 L. Ed.

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United States vs. Hudson (1812) 7 Cranch 32, 3 L. Ed. 259

We have already argued in Point Four above that the Compensation Act simply has no application to this lawsuit whatever. But, assuming for the sake of argument

that it does have such application, then we must inevitably conclude that the Section of the Act involved would be unconstitutional as an attempted curtailment of the Constitutional power of the judiciary.

POINT SIX

The Appellees Are Acting Illegally and the Relief Demanded in the Complaint Should Be Granted

Under the supremacy of law embodied in Article III of the Constitution, this court, vested with judicial power under Article III of the Constitution, is empowered to redress illegal action by government officials to the extent of holding them to the law. See *vom Baur, Federal Administrative Law*, Sections 3, 41, 650, 704, 707.

Stark vs. Wickard (1944) 321 U. S. 288

Fleming vs. Koberly Mill Products Co. (App. D. C. 1947) 160 F. (2d) 259, writ of cert. dismissed 67 S. Ct. 1304.

Ainsworth vs. Barn Ballroom Inc. (C. C. A. 4th, 1946) 137 F. (2d) 97

Perkins vs. Elg, (1939) 307 U. S. 325

The defendants, who are mere government officials in the Executive Branch of the Government, have no power under the Constitution to ignore that judgment, and to revise and reverse.

Chicago & Southern Air Lines, Inc. vs. Waterman S. S. Corp., (1948) 333 U. S. 103, 113, 114, 68 S. Ct. 431 and cases cited.

Captures on the Rio Grande (1864) 11 Op. Atty. Gen. 117

The Meteor (1866) 12 Op. Atty. Gen. 2

The Teresita's Case (1802) 10 Op. Atty Gen. 347

See also :

United States vs. O'Grady, 22 Wall 641

United States vs. Jones (1886) 119 U. S. 477

Gordon vs. United States, 2 Wall 561

As was said in *Chicago & Southern Air Lines vs. Waterman S. S. Corp.*, (1948) 333 U. S. 103, *supra*:

"This Court early and wisely determined that it would not give advisory opinions even when asked by the Chief Executive. It has also been the firm and unvarying practice of Constitutional Courts to render no judgments not binding and conclusive on the parties and none that are subject to later review or alteration by administrative action."

POINT SEVEN

The Judgment Should Be Reversed

Respectfully submitted,

F. TROWBRIDGE VOM BAUR
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J. PAULL MARSHALL
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APPENDIX**Opinion of Mr. Justice Delehanty
New York Law Journal—6/29/45**

"Estate of Maximo Calderon—Petitioner in this application to revoke letters of administration intermarried ceremonially with deceased on May 13, 1942. If she thereby acquired a status as wife of deceased her application must be granted. The respondent in the proceeding asserts that by non-ceremonial marriage entered into between her and deceased she became the wife of deceased. She asserts that two children born of that association are the lawful issue of deceased. The case presents the usual conflict of evidence as to the relations between deceased and the respondent.

"The Court is satisfied on the whole body of proof that respondent validly intermarried non-ceremonially with deceased. It finds that deceased made formal announcement that respondent was his wife in the invitations issued by him (as the court finds) and by respondent as spouses on the occasion of the baptism of their two children. In view of deceased's formal recognition of the children as his lawful issue they should have their rightful share in his property and in the proceeds of the action for his wrongful death. The invitation to the baptismal ceremony is only part of the proof establishing respondent's status. It confirms what otherwise is sufficient proof that the relationship between respondent and deceased was a matrimonial one.

"Since the court finds that deceased intermarried with respondent in 1927 the later philanderings of deceased become unimportant. So, too, is it without significance that deceased entered into a marriage ceremony with

petitioner. He was at that time married to respondent and was incapable of entering into a valid ceremonial marriage.

“Comment is necessary upon evidence submitted by petitioner that in judicial proceedings respondent asserted that her children were born out of wedlock. Respondent is illiterate. At the time the complaints were subscribed by her deceased had abandoned her and their two children and she was seeking support. There is no showing that she understood the import of the complaint which she subscribed since it was written in a tongue with which she was unfamiliar. The admission on her part which such declaration constitutes is, of course, important only in respect of her rights. She could not in any case by any such admission affect adversely the rights of her children as the legitimate issue of deceased. The court finds that her declaration is neutralized by her ignorance of the import of the paper she subscribed and of the legal consequences of it.

“Accordingly the application is dismissed on the merits, the order suspending the powers of the respondent vacated and respondent’s right to letters as the surviving spouse of deceased is in all respects confirmed. Submit, on notice, decree accordingly.”

No. 10,151

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
APPELLANTS,

vs.

MAURICE J. TOBIN, SECRETARY OF LABOR, AND EMPLOYEES'
COMPENSATION APPEALS BOARD, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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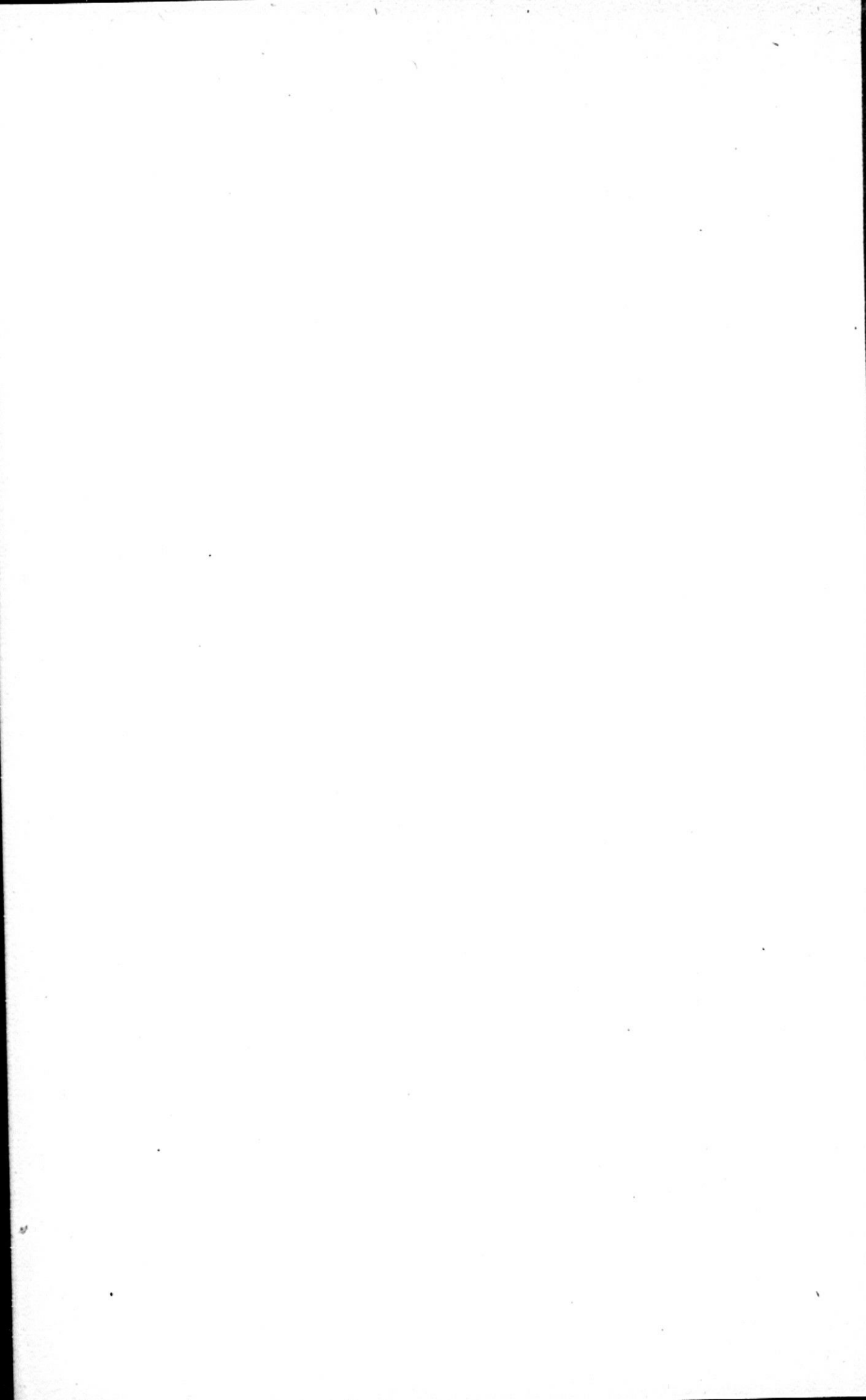
FILED OCT 20 1959

Joseph M. Howard

CLERK

STATEMENT OF QUESTION PRESENTED

In the opinion of appellee the question involved is whether a person who files a claim for compensation under the Federal Employees' Compensation Act (5 U.S.C.A. sec. 751 *et seq.*) and whose claim is administratively disallowed may file suit in the United States District Court for review of said administrative action, to compel favorable action on said claim.



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,151

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
APPELLANTS,

vs.

MAURICE J. TOBIN, SECRETARY OF LABOR, AND EMPLOYEES'
COMPENSATION APPEALS BOARD, APPELLEES

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF CASE

On November 10, 1944, one Maximino Calderon, a civil employee of the United States, was fatally injured while employed at the Brooklyn Navy Yard. Claims for compensation under the Act of September 7, 1916, Chapter 458, 39 Stat. 742, 5 U.S.C.A. sec. 751 *et seq.*, were filed with the United States Employees' Compensation Commission [effective July 16, 1946, pursuant to Reorganization Plan No. 2, the Commission was abolished and its functions transferred to the Federal Security Agency under the direction of the Administrator; effective the same day the Bureau of Employees' Compensation was established by such Agency to carry out said functions under a Director, and the Employees' Compensation Appeals Board, one of the named defendants was also established with power to hear

and decide appeals under the Federal Employees' Compensation Act; effective May 24, 1950 pursuant to Reorganization Plan 19, the Bureau of Employees' Compensation, the Employees' Compensation Appeals Board and the functions of the Federal Security Administrator and the Federal Security Agency with respect thereto were transferred to the Department of Labor under the Secretary of Labor] by Adela C. Calderon, Celia Calderon, and Aurea Calderon, the latter being one of the appellants herein (hereinafter called "claimant"), all claiming as widows of the deceased employee. Section 10 of said Act defines a widow as follows:

"The term 'widow' includes only the decedent's wife living with or dependent for support upon him at time of his death or living apart for reasonable cause or by reason of his desertion".

On January 31, 1946, the United States Employees' Compensation Commission made a determination that *Celia Calderon* was the surviving wife of the deceased employee; the said Commission also simultaneously determined that Adela C. Calderon and Aurea Calderon were not the surviving wives of the deceased employee, because at the time of their alleged respective marriages to the deceased employee, the latter was not free to enter into said marriages because of his previous marriage to Celia which had not been dissolved. (The claims for compensation of the minor children, Ruby Calderon and James Calderon, appellants herein, were allowed and have been fully paid.)

Claimant applied to the Bureau of Employees' Compensation for administrative review of said decision pursuant to section 37 of the Compensation Act (5 U.S.C.A. sec 787), which provides in substance that the Commission (now Bureau) may at any time on its own motion or on application, review the compensation case and in accordance with the facts found on such review may end, diminish or increase the compensation previously awarded, or, if compensation has been refused, may award compensation. The substance or basis of claimant's application for administrative review was that she had been judicially determined to be the widow of the deceased employee in a proceeding

in the Surrogate's Court in the State of New York, and that the Bureau was bound by that decision. The Bureau reviewed the case but declined to modify the previous decision. Claimant thereupon appealed from the latter decision to the Employees' Compensation Appeals Board, which on February 13, 1948, affirmed the order of the Bureau denying modification of the previous decision. Claimant then filed a complaint in the court below for a judgment declaring (A) that the judgment of the Surrogate's Court of the State of New York is binding upon the defendants, (B) that she is the surviving wife and widow of the deceased employee, and (C) that Ruby and James Calderon are the lawful issue of the marriage between claimant and deceased employee. The complaint also requested an injunction restraining defendants from denying compensation to plaintiff upon the ground that she is not the surviving wife and widow of the deceased employee.

A motion to dismiss the complaint (17 A) was filed on behalf of the defendants upon the grounds (a) that the court did not have jurisdiction of the subject matter of the action, (b) that the United States did not give its consent to be sued, and (c) that the law expressly prohibited the action. The court below granted the motion and dismissed the complaint (2 A). Its oral opinion appears on page 3A. Plaintiffs then appealed to this court from the judgment of dismissal.

STATUTE INVOLVED

The Federal Employees' Compensation Act of September 7, 1916, Chapter 458, 39 Stat. 742, 5 U.S.C.A. sec. 751 *et seq.*, as amended.

SUMMARY OF ARGUMENT

(1) All federal courts are courts of limited jurisdiction and an action therein will not lie unless it is alleged in the pleadings and proven that the subject matter of the action is one within the jurisdiction of said courts. In the instant case it appears nowhere in the pleading (or otherwise) that the subject matter of the action is one which is within the jurisdiction of the federal courts.

(2) The United States as a sovereign may not be sued without its consent, which consent must be alleged and shown in any action which is brought against the United States. Plaintiff has not only failed to show that the United States has consented to be sued in connection with a claim for compensation under the Federal Employees' Compensation Act but the latter Act itself expressly provides in substance that no suit shall be brought to review any decision upon such claim.

ARGUMENT

I

The Court Below Lacked Jurisdiction of the Subject Matter of the Action

It is well recognized that Federal courts are courts of limited jurisdiction and that it is necessary for plaintiffs to *plead and prove* that the court has jurisdiction of the particular matter which it is called upon to decide. *McNutt v. General Motors Corp.*, 298 U.S. 178; *Barnhart v. Western Md. R. R. Co.*, 128 F. 2d 709 (C.C.A. 4, 1942); *Hanford v. Davies*, 163 U.S. 273 (1896); *Woods v. First National Bank of Albuquerque, N. M.*, 16 F. 2d 856 (C.C.A. 9, 1926); *Smith v. McCullough*, 270 U.S. 456 (1926); *Kelly v. Queeney*, 41 F. Supp. 1015 (N.Y. 1941); *Commors v. United States*, 66 F. Supp. 943 (Mont. 1946), *aff'd* 159 F. 2d 248; *Lockerty v. Phillips*, 319 U.S. 182, 187; *Metropolitan Life Insurance Company v. United States*, 107 F. 2d 311 (C.C.A. 6, 1939).

The complaint in the instant case contains no allegation that the United States District Court has jurisdiction of the cause. It is therefore insufficient on its face and was properly dismissed for that reason alone.

II

The United States Has Not Consented to Be Sued

Even if it appeared from the complaint that the court below had jurisdiction of the subject matter of the suit, it would have been necessary for plaintiff to show affirmatively that the United States had consented to be sued. Typical of the statements in the many cases as to the

necessity of proof of consent to be sued on the part of the United States is that in *Metropolitan Life Insurance Company v. United States*, 107 F. 2d 311 (C.A. 6, 1939) where the court said:

“The jurisdiction of Federal District Courts is limited not only by the Constitution (U.S.C.A. Const. art. 3, sec. 3, cl. 1), but also by the Acts of the Congress (Jud. Code sec. 24, 28 U.S.C.A. sec. 41), and where the latter, in conferring it, points out the manner in which it shall be exercised, only that method expressly or impliedly conferred may be followed (citing cases).

“The United States as a sovereign may be sued only with its consent * * *.”

Appellant apparently is of the opinion that because the Constitution provides (Article III sections 1 and 2) that the judicial power of the federal courts “shall extend to all cases arising under the Constitution and laws of the United States”, the consent of the United States to be sued is unnecessary where the suit arises under the laws of the United States (in the instant case under the Federal Employees’ Compensation Act) or because of an alleged violation of the Constitution, (in the instant case because of the refusal to accept the judgment of a New York State court as to the legal status of one of the claimants). It is our understanding that the “consent doctrine” admits of no exceptions particularly the exceptions referred to above. We know of no cases supporting the claimed exceptions and there are many cases (*infra*) holding that the consent of the United States is requisite to jurisdiction regardless of the fact that the case arose under a federal law or the Constitution.

Appellants confuse jurisdiction of subject matter (as e. g., provided by 28 U.S.C. 1331) with jurisdiction of the person. The latter, when the United States or its officers or agents are defendants, involves waiver of sovereign immunity. Such jurisdiction is consented to, for example, by the Tucker Act, 28 U.S.C. 1346,—but only as to certain types of actions, as e.g., on contract express or implied. The within suit obviously is not a contract action and not brought under the Tucker Act. Plaintiff must, but fails,

to find any other manifestation of the sovereign's consent to suit or waiver of immunity.

Therefore even if plaintiffs had pleaded that the court below had jurisdiction of the subject matter of the suit, the complaint was deficient in failing to allege that the United States had consented to be sued and pointing out the particular place where the alleged consent is to be found.

III

Judicial Review of Determinations under the Federal Employees' Compensation Act Is Not Contemplated or Provided for in Said Act

In addition to the absence of any showing of jurisdiction in the complaint, the provisions in the Compensation Act preclude judicial review of the decision disallowing the plaintiff's claim.

Section 42 of the Compensation Act of September 7, 1916, as amended July 28, 1945 by Ch. 328, 59 Stat. 503, provides in part as follows:

“The action of the Commission (now Bureau) or its designees in allowing or denying any payment under this Act shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the acts of any certifying or disbursing officer for payments in accordance with such action.”

This provision is about as clear as language could make it; unless claimant can show that said provision is not applicable or invalid, it would seem that the instant action, which necessarily involves review of a decision of the former United States Employees' Compensation Commission and of the Bureau of Employees' Compensation, would not lie.

Even prior to the inclusion in the Compensation Act of the provision in the Act of July 28, 1945, just quoted the courts uniformly held that so-called “gratuity Acts”, that

is, those Acts under which benefits are paid directly by the United States, do not contemplate suits against the Government, upon the theory that the benefits conferred are not "rights" but gratuities, and hence that they can not be enforced in the courts. *Dahn v. Davis*, 258 U. S. 421, 431; *Silva v. United States*, 292 F. 464; *Miller v. United States Employees' Compensation Commission*, decided January 2, 1936, by the United States District Court, eastern district of New York (not reported); *Thomason v. Work Projects Administration*, 47 F. Supp. 51 (Idaho, 1942); *White v. T.V.A.*, 58 F. Supp. 776 (Tenn. 1945).

In *Dahn v. Davis*, *supra*, the court said:

"The Act (compensation) does not contemplate or provide for suits against the Government".

In the *Thomason Case*, *supra*, the court said:

"But it will be observed that the Act (compensation) for granting benefits to employees who come under it does not provide for a law action and *does not give consent to sue the Government or any of its agencies to recover for an injury*". (Emphasis supplied.)

In *White v. T.V.A.*, *supra*, the court said:

"Nor does there appear any provision for a judicial review of the action of the Commission except by the Commission itself. 1923; Op. Atty. Gen. 476". (Emphasis supplied.)

In *Miller v. United States Employees' Compensation Commission*, *supra*, the court said:

"The Act (compensation) contains no provision for review by the courts". (Emphasis supplied.)

The above cited decisions which hold that the courts do not have jurisdiction to review administrative action in connection with claims filed for benefits under the United States Employees' Compensation Act are consistent with the decisions under other acts which provide for filing and adjudication of claims for gratuity benefits.

In *Nolde & Horst Co. v. Helvering*, 122 F. 2d 41, 74 App. D. C. 204 (1941), Judge Rutledge writing for the court said:

“The payments which appellant seeks to have made are payable from the public funds. This fact alone would require Congressional appropriation and waiver of immunity to suit for their enforcement”. * * *

“The payments therefore were in the nature of gratuities, similar to those provided for under section 5 of the Dent Act. Here, as there, Congress ‘was not dealing with vested rights’ and ‘was occupying toward the proposed beneficiaries * * * the attitude rather of a benefactor than of a debtor at law’. Here, as there, the procedural consequence flowing from the gratuitous character of the payments is that Congress had full power to vest final and exclusive jurisdiction over the claims in an executive official or agency, *and to withhold entirely from the courts power to interfere with his or its action.*

“We think the terms of section 602 and its legislative history show clearly that Congress has done this. Section 602 (d) requires that the claimant establish the facts on which his claim is based ‘to the satisfaction of the Commissioner’, and section 602 (i) provides that his decision ‘shall be final and no court shall have jurisdiction to review such determination’. These are substantially the provisions made in section 5 of the Dent Act, which, taken in connection with the gratuitous nature of the substantive claim, formed the basis for the decision in *Work v. United States ex rel. Rives*, 1925, 267 U. S. 175, 45 S. Ct. 252, 69 L. Ed. 561. It follows that the courts are as much without power to interfere with or control the Commissioner’s action in respect to these claims, as they were with reference to claims for payments authorized by the Dent Act.

“This conclusion is supported further by the provisions of section 602 relating to administrative review and to procedure for establishing the claims, as well as by the legislative history of the statute. The finality which was intended to characterize the Commissioner’s action is shown by section 602 (h) [see section 37 of the Federal Employees’ Compensation Act, 5 U.S. C.A. section 787 for the comparable provision], which prohibits review of his decisions ‘by any other administrative or accounting officer, employee, or agent of the United States’, except for fraud or mathematical [mis] calculation”.

It is to be noted that the provisions of section 602 (i) construed in the opinion just quoted are substantially the provisions in section 42 of the Federal Employees' Compensation Act.

In *Van Horne v. Hines*, 122 F. 2d 207, 74 App. D. C. 214 (1941), cert. den. 314 U. S. 689, which related to a claim for compensation benefits under the Veterans Act, the court said:

"But the real defense of the United States in this case is based upon section 11 of Public No. 866, 76th Cong., 3d Sess., and under its provisions we are asked to dismiss the appeal for lack of jurisdiction. The pertinent portion of section 11 reads: '* * * the decisions of the Administrator * * * on any question of law or fact concerning a claim for benefits or payments * * * shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions.' * * *

"We think the Administrator's position is correct. There can be no doubt that veterans' benefits are gratuities and establish no vested rights in the recipient. See *Lynch v. United States*, 292 U. S. 571, 54 S. Ct. 840, 78 L. Ed. 1434; *White v. United States*, 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530. And this being so, such benefits may be withdrawn at any time by act of Congress, and to make the withdrawal effective, Congress may in turn withdraw jurisdiction from the courts over decisions of the Administrator in relation thereto. *Kline v. Burke, Constr. Co.*, 260 U. S. 226, 234, 43 S. Ct. 79, 67 L. Ed. 226, 24 A.L.R. 1077; *Barnett v. Hines*, 70 App. D. C. 217, 105 F. 2d 96. If, therefore, Congress has by the passage of the act withdrawn jurisdiction, it is of no consequence that the act became effective after the trial below and during the pendency of the appeal in this court, for the rule is well established that, where jurisdiction conferred by statute is prohibited by a later statute, jurisdiction ceases and causes pending at the time of the latter enactment must be dismissed. See *Hallowell v. Commons*, 239 U. S. 506, 36 S. Ct. 202, 60 L. Ed. 409, *White v. United States*, *supra*, and also *Smallwood v. Gallardo*, 275 U. S. 56, 62, 48 S. Ct. 23, 24, 72 L. Ed. 152, where the Supreme Court said: 'When the root is cut the branches fall'.

“And this brings us to the single question whether the act on its face shows that Congress meant to withdraw from the jurisdiction of the courts every final decision of the Administrator in relation to benefit payments in the nature of gratuities provided for under the Act. We think this unmistakable intent is shown by the language of the act, and that the plain meaning of the words used brings us necessarily to this result, for the language is that the court shall not consider or review questions of law or fact ‘concerning a claim for benefits or payments’. The words—concerning a claim for payments—can have no other meaning than—having relation to—such payments, and whatever the language of the prayer of the present complaint, the obvious purpose of the suit is to require the Administrator to resume benefit payments to appellant which the Administrator has decided appellant has forfeited all right to. Undoubtedly, if we hold here as appellant asks, the judgment we should direct would require the Administrator to pay appellant the money benefits accruing since 1937 and those to accrue hereafter,—otherwise the action would be bootless,—and to do this we would have to review the Administrator’s decision ‘concerning a claim for * * * payments’, and this the statute in plain words forbids”.

Accord: *Morgan v. United States*, 115 F. 2d 426 (C.A. 5, 1940) which also related to a claim for benefits under the Veterans Act; *Moore v. United States*, 45 F. Supp. 656 (Iowa 1942), which involved payment of soil conservation benefits; *Wilson v. United States*, 311 U. S. 104 (1940) which involved refunds under the Agricultural Adjustment Act.

The two statutes construed in the *Nolde* and *Van Horne* cases, respectively, like the Compensation Act in the instant case contain provisions in effect that the decisions of the Commissioner or Administrator, respectively, shall be final and not subject to review. It is also to be noted that the *Van Horne* case holds that when the right to judicial review has been withdrawn from the courts, jurisdiction ceases as to pending, as well as future cases. Accord: *Louisville Provision Co. v. Glenn*, 12 F. Supp. 545 (Ky. 1935); *Kline v. Burke Construction Co.*, 260 U. S. 226. In other words, it is immaterial that the injury or death

occurred prior to the enactment of a law terminating any prior right to judicial review. Therefore assuming *arguendo* that plaintiff would have had the right to judicial review prior to the amendment of sec. 42 of the Compensation Act on July 28, 1945, the said amendment would have withdrawn any consent of the United States to be sued and terminated any jurisdiction of the court to entertain such an action. *Lynch v. United States*, 292 U. S. 571.

Declaratory Judgment Act Does Not Extend Jurisdiction of the United States Courts

It is now well settled that the Declaratory Judgment Act did not extend the jurisdiction of the United States courts but merely applied a new procedure to cases within their jurisdiction. In other words, the case must be one which comes within the jurisdiction of the United States courts, otherwise the Declaratory Judgment Act does not apply.

In *Putnam, et al. v. Ickes, Secretary of the Interior et al.* 78 F. 2d 223, 64 App. D. C. 339 (1935), the court said:

“We think it is clear from any reasonable construction of the acts that the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought. The act merely declares that a court of the United States has power ‘in cases of actual controversy * * * to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed’. (28 U.S.C.A. sec. 400). It clearly follows, we think, that in any actual controversy wherein the court otherwise has jurisdiction of the subject-matter and the parties the court has power to determine the rights of the petitioner, although the case may not have developed to a point wherein affirmative relief could be given. That is as far as the act goes. The right of the court to assume jurisdiction is to be determined by the principles laid down in the Judicial Code. The Declaratory Act is in no respect amendatory of the Judicial Code either directly or by implication. If Congress had intended by this act to extend the jurisdiction of the courts in cases arising under it, it would have so stated in the act, and in the absence of such statement or language clearly implying

such intent, the act must be limited to the jurisdiction expressed therein”.

Accord: *Mashunkashay v. United States*, 131 F. 2d 288 (C.C.A. 10, 1942); *Southern Pacific Co. v. McAdoo*, 82 F. 2d 121 (C.C.A. 9, 1936); *Miles Laboratories v. Federal Trade Comm.*, 50 F. Supp. 434 (D.C. 1943); *United States v. West Virginia*, 295 U. S. 463; *Love v. United States*, 108 F. 2d 43 (C.C.A. 8, 1939).

In *Love v. United States*, *supra*, the court said:

“The Act makes no mention of suits against the United States, nor does it give any indication of intention to broaden judicial supervision over the executive or administrative departments of the government”.

* * * * *

We believe that the law relating to the instant case has been well stated in Federal Administrative Law, Vom Baur, as follows:

“SEC. 89. Agencies which exercise special functions: Gratuity Cases.

“Administrative agencies may be set up as special tribunals for special functions which do not affect private rights. Where an administrative agency sits not to determine a private right, but to determine whether a particular party should receive a gratuity conferred by Congress, concerning which there are no legal rights, the judicial aspects of determinations involving private rights are not present. *Accordingly the right to judicial review, and the other constitutional or legal rights of private parties do not exist in these circumstances.*” (Emphasis supplied.)

“SEC. 426. Apparent exception: Gratuity Cases.

“An apparent exception to the rule that judicial questions are always open for decision by an appropriate court is found in gratuity cases, where Congress, since it need grant nothing, can condition its grant upon any terms it chooses. The claimant has no legal rights and therefore none may be infringed, no matter what procedure is prescribed. Thus Congress may delegate to an officer or agency discretion to decide the final construction of the statute being

executed, which would be a judicial question if private rights were affected. No court in such a case can control, by mandamus or otherwise the administrative interpretation, even if it may think it erroneous. It is conclusive."

"SEC. 54. To determine claims against the United States.

"Where the United States creates claims against itself, it is not bound to provide a remedy in the courts, for claimants have no legal rights apart from those created *ex gratia*. It may withhold all remedy or it may provide an administrative remedy and make it exclusive, however erroneous under judicial standards application of the administrative remedy may be in a particular case. This means that so far as claims against the United States are concerned, the administrative remedy may be made exclusive to the extent of precluding judicial review on questions of law. Judicial review may be precluded by Act of Congress in this instance because no case or controversy may be established for application of the judicial power, due to the absence of legal rights against the United States beyond those expressly created by statute."

Since the court below dismissed the case upon jurisdictional grounds and did not review the case upon the merits to determine whether the decision of the Bureau of Employees' Compensation, as affirmed by the Appeals Board, to the effect that plaintiff Aurea Calderon was not the widow of the deceased employee within the meaning of the Compensation Act was correct, we shall not develop extensively the point that judgment of the court below dismissing the complaint was proper aside from the jurisdictional grounds, except to reply to appellants' contentions as follows (Point IV hereof).

IV

Even If There Were Jurisdiction, Neither the Court Below nor the Administrative Agency Would Have Been Bound by the New York Surrogate's Decision

A. Judgment in Rem.

Appellant's contention in this respect appears to be that a finding to the effect that Aurea Calderon was the widow

of the deceased contained a judgment of the Surrogate's Court of New York County, State of New York in a proceeding in that court relating to the grant of Letters of Administration in respect to the deceased employee's estate was binding upon the Bureau (a) because it was a proceeding in rem and therefore binding upon the whole world (including the United States), and (b) because it was entitled to full faith and credit under Article IV, section 1 of the Constitution. As to the first ground the proceeding in the Surrogate's Court related to the estate of the deceased employee. The finding of the court as to Aurea's status as the widow of the deceased was only incidental to the court's determination as to her entitlement to Letters of Administration. "An adjudication which creates or changes legal status is in rem but one which finds or adjudicates the past or present existence of a particular status is not in that aspect a judgment in rem but must be treated like any other judgment in personam" (3 Freeman on Judgments, sec. 1534, p. 3145). Accord: *American Woolen Company v. Lesher*, 267 Ill. 11, 107 N. E. 882 (1915); *Hilton v. Snyder*, 37 Utah 384, 108 Pac. 698. Appellant has cited no authority which holds that a judgment in a proceeding to obtain Letters of Administration is a judgment in rem as to the status of the contestants for said Letters.

In *Sorensen v. Sorensen*, 68 Neb. 483, 98 N. W. 837, which like the judgment in the instant case also involved the effect of a decree in a proceeding for Letters of Administration, the court said:

"That the proceeding was in rem, and that all the world were parties thereto, may be conceded. It will also be conceded that, ordinarily, a judgment in rem, rendered by a court of competent jurisdiction, is binding on all persons and is not open to collateral attack. But it does not necessarily follow that the whole world are bound by every matter litigated and judicially determined in the proceeding of which such judgment is the product. The principal relief sought in a proceeding in rem is usually an adjudication upon the status of some person or thing, and the judgment ipso facto, renders the status of such person or thing what it declares it to be".

The *Sorenson* case was considered with great deliberation by the highest court of Nebraska and its Appeal Commissioners, on five different occasions. That court repeatedly and explicitly decided that a judgment denying the suit of an alleged (common law) widow to vacate the appointment of others as administrators, and to give the right of administration or naming of the administrator, to her, was not a judgment in rem as to her status (of widow or not widow) so as to bind even the courts of that same state, in other suits and proceedings, involving her status, but in which collateral proceedings she was not the legal party in interest.

As was said in the *Sorenson* decision, first quoted above, at (98 N. W.) p. 839:

“But we must view the conclusion in the light of the main purpose of the proceeding in question, namely, the grant of administration on the estate of the intestate. As to every fact essential to such purpose, the judgment is conclusive and binding on all persons, . . . But the right of any particular person to nominate an administrator, or to letters of administration, by reason of his relationship to the intestate, is not one of the essential facts upon which the grant is based . . . There is no presumption that one not claiming the right to nominate an administrator, or to letters of administration, has any interest in the litigation between others concerning such right. It would be absurd to require such party to embroil himself in a controversy in which he had no interest, and to resist a judgment or decree to which he had no objection, and which of itself could work him no harm, merely to prevent an objectionable finding. We think the true rule is that a judgment in rem is binding and conclusive upon all persons as to every matter necessarily involved in the adjudication upon the status of the person or thing which is the subject matter of the proceeding; but as to matters involved in collateral litigation therein, between particular parties, and not necessarily involved in a judgment of that character, it is binding only upon those who actually litigated such matters, and their privies.”

See also the same case in 103 N. W. 455, where the court at p. 456 again makes its position clear on this subject as follows:

“The first ground for this contention is that the litigation between her and the defendants in error here in regard to the appointment of the administrator of this estate is an adjudication of her status, and is binding upon all parties. We think that this contention is fully met by the reasoning of Mr. Commissioner Albert in the second opinion herein, which is reported in 98 N. W. 837.”

See also 100 N. W. 931 to the same effect.

See to same effect *Becher v. Contour Laboratories*, 279 U. S. 388. Moreover, assuming that the proceedings in said Surrogate's Court were regular (Celia, the real widow was not before the court and was not made a party to the proceeding) the judgment would be binding “upon the whole world” only as to the “res” before the court. The claim for compensation under the Federal Employees' Compensation Act was not before the court and was not part of his estate. *Fennell v. United States*, 67 F. 2d 768 (C. A. 5). The Compensation Act does not provide for payment of benefits to the estate of the deceased employee but only to certain specified persons such as the widow, children, etc. of the deceased (see section 10 of the Federal Employees' Compensation Act, 5 U. S. C. A. sec 760). Since the “res” which was before the Surrogate's Court was only the estate within its jurisdiction and did not include the compensation claim, the judgment could not be binding upon the United States, (aside from the fact that the United States could not be bound by any judgment in which it did not appear or give its consent). *Riley v. New York Trust Co.*, 315 U. S. 343; *Spitzer v. Branning*, 184 So. 770, 135 Fla. 49 (1939); *In re Hencke's Estate*, 19 N. W. 2d 718, 220 Minn. 414 (1945); *Oxley v. Sweetland*, 94 F. 2d 33 (1938); *Brown v. Fletcher*, 210 U. S. 82.

But even if the compensation claim had been the “res” involved in the proceeding before the New York court, the United States would not be bound by the judgment be-

cause it was not made a party to the proceedings (the United States *does* because of its sovereignty stand in a different position from other litigants with respect to its rights) and did not consent to becoming a party. Unless the United States is a party to a proceeding with its consent no rights can be taken against it. *Chisholm v. House*, 160 F. 2d 632 (C.A. 10, 1944); *Lorber v. Vista Irrigation District*, 127 F. 2d 401 (C. A. 9, 1942); *Mahnomem County v. United States*, 131 F. 2d 936 (1943); *United States v. Colvard*, 89 F. 2d 312 (C.A. 4, 1937); *Commissioner of Internal Revenue v. Masterson*, 127 F. 2d 252 (C.A. 5, 1942); *Ex parte Lee Fong Fook*, 74 F. Supp. 68 (Cal. 1948).

Appellants misapprehend the nature of the proceedings in the New York Surrogate's Court (Joint App., 14A-15A). The application was to vacate letters of administration granted to Aurea, and for the appointment in her place of the petitioner Adela. The allegation that Adela was the true widow and not Aurea, was merely given as a ground of the petition. What was decided by the court (Joint App., 16A) was only the dismissal of the petition or application and the confirming of the previous grant of letters to Aurea. The Surrogate's opinion (Appellants' App. 19-20) merely discussed the incidental quarrel between Aurea and Adela as personal between those two. The New York proceeding was not at all one to establish status of marriage or to quiet Celia's or any other rival's claim of marital status, as for example in a suit for jactitation, *Thompson v. Rourke* (English Court of Appeals), 1893 P. 70.

B. Full Faith and Credit.

Appellant's second contention is that the judgment of the Surrogate's Court of New York that claimant was entitled to Letters of Administration upon the estate of the deceased (based upon the subsidiary finding that claimant is the widow of the deceased) is binding upon the Bureau in its determination of her claim for compensation as such widow under the full faith and credit clause. There are several answers to this contention. First, it could not

be validly contended that Article IV section 1 of the Constitution of the United States, containing the full faith and credit clause, is superior to other clauses of the Constitution. Article VI clause 2 provides that the Constitution *and the laws of the United States which shall be made in pursuance thereof* (which would include the Federal Employees' Compensation Act) *shall be the supreme law of the land*. In *Brown v. Wright*, 137 F. 2d 484 (C.A. 4, 1943) the court said that the laws passed by Congress are the supreme law of the land and it was not intended that the power to enforce the laws should be limited by orders of a state court. Accord: *Mississippi Valley Trust Co. v. Commissioner*, 72 F. 2d 197 (C.A. 8, 1934) cert den. 293 U. S. 604. Hence, the provisions in section 32 of the Compensation Act (5 U.S.C.A. sec. 783) to the effect that the administrator "shall decide all questions arising under this Act" have equal validity with Article IV section 1 of the Constitution, *supra*, and are superior to a judgment of a state court which in effect purports to determine the entitlement to compensation under the Federal Employees' Compensation Act. The courts have uniformly held that in the administration of a federal law the United States Government is not bound by decisions of state courts upon issues within the province of the administrators of the federal law.

In *Ramsey v. United States*, 61 F. 2d 444 (C.A. 5, 1932) in a suit upon a war risk insurance policy it was held that the Government was not bound by a judgment of the state court holding that a certain person was the widow of the deceased. The court said:

"The United States was not a party to the suit in the state court and not interested in its outcome. The United States has a real and substantial interest, beyond that of a mere stakeholder, to in good faith protect the beneficiary named in a policy of war risk insurance and to make payment according to the contract. The government was not bound by the judgment in the state court. *Privett v. U. S.*, 256 U. S. 201, 41 S. Ct. 455, 65 L. Ed. 889."

Likewise in *Hastings v. United States*, 133 F. 2d 218 (C.A. 6, 1943) also in a suit upon a war risk insurance policy the court held that the Government was not bound by a declaratory judgment in a state court, to which it was not a party on the issue whether the deceased named a certain person as the beneficiary of his government insurance or died intestate with respect thereto.

In the administration of the Social Security Law it has been held that the Government was not bound by a decision of a State court as to whether certain employees are "agricultural laborers" (*Stuart v. Kleck*, 129 F. 2d 400 (C.A. 9, 1942)) or whether certain other persons are "independent contractors" rather than employees. (*American Oil Co. v. Fly*, 135 F. 2d 491, 147 A.L.R. 824 (C.A. 5, 1943)).

By some process of reasoning which is not clear, appellant contends that if the provisions in the compensation law relating to the finality of the determinations made by the Bureau are so construed as to prevent a review by the court it would constitute a deprivation of rights under the full faith and credit clause and moreover would be a curtailment of the jurisdiction of the federal courts. As stated above, it is not clear how appellant arrives at such conclusion, at least it is not apparent from the argument. At any rate the Act which grants the compensation benefits does not give any justiciable right; hence a potential beneficiary under said Act has no right for the court's determination—and if there is no right there could be no deprivation of right. And with respect to the alleged curtailment of the jurisdiction of the federal courts, as stated above, it has always been the law that a sovereign may not be sued without its consent; the fact that the suit allegedly arises under a federal law or under the Constitution does not constitute an exception.

As demonstrated in the 1945 Cardozo lecture by Supreme Court Justice Jackson (*Full Faith and Credit*, published separately and also appearing in the *Columbia Law Review* of that year), the full faith and credit clause of the constitution has not been explicitly developed very intensively thus far as a separate or constitutional doctrine. Diligent

search fails to disclose any authority or analogy for appellants' present novel point. On the present appeal the full faith and credit clause would seem to add nothing to ordinary principles of conflict of laws and the common law doctrine of judgment in rem. By whatever label invoked, the substance of the case stands out, namely, that the New York Surrogate's decision was simply not a judgment of status so as to exclude Celia, the woman adjudged the widow herein by the Government agency below. Thus, the latest edition of Freeman on Judgments (Vol. III, Sec. 1421), dealing with adjudications of status, such as legitimation, marriage, etc., merges the doctrines of full faith and credit and judgment in rem and comes to the conclusion that while a proceeding to create a status may have the intrinsic qualities of a judgment in rem and one entitled to full faith and credit, a proceeding to adjudicate upon facts involving an already existing status is only an action in personam without force beyond the parties to the proceeding and the place of such proceeding. See *Clark v. Clark*, 145 La. 740, 82 So. 875. See also *Amory v. Amory*, 26 Wisc. 152, which denied a divorce on the ground that the parties had never been married, as to which the learned editor of Freeman (Sec. 1422) observes:

"As to the world at large the parties would be undivorced but not necessarily married, since the finding of no marriage, the *res judicata* as between the parties and their privies, would not conclude others, in harmony with the general rule that third persons are not bound by the findings of fact upon which an adjudication in rem is based."

CONCLUSION

In view of the above, it would seem that the court below properly dismissed the complaint (a) because the complaint does not allege that the court has jurisdiction of the subject matter of the action, (b) because it does not appear that the United States has consented to be sued, and (c) because the provisions of the Compensation Act of September 7, 1916, as amended, preclude judicial review

of the action taken upon any claim filed pursuant to the provisions of said Act. The judgment appealed from should be affirmed.

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No. 10,151

REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
Appellants,

v.

MAURICE J. TOBIN, Secretary of Labor, and
Employees Compensation Appeals Board,
Appellees.

Appeal from the United States District Court
United States Court of Appeals for the
District of Columbia Circuit

FILED DEC 5 1950

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,151

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
Appellants,

v.

MAURICE J. TOBIN, Secretary of Labor, and
Employees Compensation Appeals Board,
Appellees.

**Appeal from the United States District Court
for the District of Columbia**

APPELLANT'S REPLY BRIEF

We submit that Appellees, in their 21 page brief with its flood of irrelevant citations, have failed to meet the issues presented by this appeal, or the arguments set forth in our main brief.

The Question Presented

Appellees have completely misstated the question presented on Page 1 of their brief. They assert that "the

question involved is whether a person who files a claim for compensation . . . may file suit in the United States District Court . . . to compel favorable action on said claim."

But the complaint does *not* seek to do any such thing. It does seek a declaratory judgment of plaintiffs' "rights and other legal relations" (28 U. S. C. 2201), that the plaintiffs are, respectively, the lawful spouse and children of the decedent (13A). And plaintiffs seek, as an incidental measure of relief pursuant to 28 U. S. C. 2202, that the defendants be restrained from refusing to pay compensation to plaintiff Aurea on an illegal ground, to-wit: that she is not the lawful surviving spouse of the deceased. See *National Hairdressers' and Cosmetologists' Assn. v. Philadelphia Co.* (D. C. Del. 1941), 41 F. Supp. 701, Aff. 129 F. (2) 1020; *Interstate Natural Gas Company v. Louisiana Public Service Commission* (D. C. La. 1940), 34 F. Supp. 980. The complaint does not seek to restrain defendants from refusing to pay compensation to Aurea on any legal ground; and it certainly does not seek to "compel" any kind of payment.

Full compensation has apparently been paid to Plaintiffs Ruby and James, and with respect to them no injunctive relief, but only a declaratory judgment of their status, is sought.

All in all, in their statement of the question presented, Appellees totally ignore the fact that a declaratory judgment is the basic relief sought in the complaint. And they also ignore the fact that plaintiffs' legal rights have been adversely affected and their position jeopardized by Appellees, and that they are clearly entitled to have their status cleared up—to remove the clouds upon it cast by the Appellees, and to end the disturbing confusion created by the Appellees, which now prevent Appellants from knowing whether their status is a legitimate one or illegitimate. See *Perkins v. Elg* (1939), 307 U. S. 325. *Gor-*

don v. Bowles (Em. App. 1946), 153 F. (2d) 614, Cert. den. 328 U. S. 858; *Aetna Life Insurance Company v. Haworth* (C. C. A. Mo. 1936), 84 F. (2d) 695, rev. on other grounds 300 U. S. 227; *Redlands Foothill Groves v. Jacobs* (D. C. Cal. 1940), 30 F. Supp. 995.

As was said in *Gordon v. Bowles*, supra:

"The Declaratory Judgment Act, 28 U. S. C. A. Sec. 400 (now 2201, 2202) we think affords a complete remedy. * * * The Complainant need only show that his position is jeopardized by the statute, regulation or order, and thereupon the court will afford relief for any uncertainties with respect to his rights."

1. Jurisdiction:

As their first point, Appellees assert that the District Court did not have jurisdiction, an argument which was rejected by the Court below. Since this suit arises under the Constitution and laws of the United States and involves irreparable injury to the plaintiffs, the District Court would appear clearly to have jurisdiction under 28 U. S. C. A. 41(1), 11 D. C. Code 301 and 11 D. C. Code 305, and the Declaratory Judgment Act, 28 U. S. C. 2201, 2202. *Stark v. Wickard* (1944), 321 U. S. 288; *Perkins v. Elg* (1939), 307 U. S. 325 (a declaratory judgment case); *von Baur, Federal Administrative Law*, Sections 650, 652, 661, 664, 707. It would, in addition, also have jurisdiction under the Administrative Procedure Act, 5 U. S. Ct. 1009, *Kristensen v. McGrath*, Attorney General, (App. D. C. 1949), 179 Fed. (2) 796. As was said by this Court in the *Kristensen* case:

"... Appellants suit for a declaratory judgment is well taken if he can prove the existence of a justiciable case or controversy". (P. 800).

2. This Is Not a Suit Against the United States:

Appellee's Brief is shot through with the delusion that this is a suit against the United States and that consent to be sued is necessary. But the United States is not a party, and no relief against the United States is sought. And the Appellees are apparently unable to answer Point Six of our Main Brief, the point that, as government officials, appellees have acted illegally and that this court is empowered to redress such illegal action.

3. This Court Has Power to Prevent Defendants From Acting Illegally:

A. No "*Gratuity*" Is Involved:

The complaint seeks a declaratory judgment as to the *status* of the plaintiffs. The defendants have cast a serious cloud on the status of the plaintiffs. They claim the relationship of plaintiffs with deceased was an illegitimate one; and in doing that they have adversely and seriously affected plaintiffs' legal rights. The plaintiffs are entitled to have their status adjudicated. And insofar as the complaint seeks a judgment determining the *status* of the plaintiffs, certainly no "*gratuity*" is involved. And insofar as the complaint seeks ancillary relief under 28 U. S. C. A. 2202, to restrain the Appellees from refusing to pay compensation on an illegal ground, it seeks neither compensation nor gratuity, for Appellees would still have discretion to refuse to pay compensation on any legal ground. No money judgment or mandatory injunction is sought.

But for the sake of argument only, it is pertinent to point out that the subject of the Compensation Act of 1917 is *compensation*, not "*gratuities*". Indeed, this is the only basis upon which the constitutional validity of State Workmens Compensation Laws have been upheld, or could have been upheld. A permissible "*method of*

compensation" is the criterion. *New York Central Railway Co. v. White* (1917), 243 U. S. 188, 202. The same is true with respect to the constitutional validity of Federal Workmens Compensation Acts. *Second Employers Liability Cases* (1912), 223 U. S. 1. In the instant case, the decedent herein was killed in the course of his employment by the Navy, and, as a matter of fact, through the Navy's negligence.

B. The Appellees Are Acting Illegally and the Courts May Restrain Them From Doing So:

As pointed out in Section 1 hereof, and Point Six of our Main Brief, the Appellees are acting illegally and this Court is clearly empowered to redress illegal action by government officials. Indeed, this rule is the whole foundation of our system of Administrative Law. See *vom Baur*, Op. cit., Section 3 and the introduction to the 1947 supplement thereof by Roscoe Pound, Page IV. And Appellees make no answer to the authorities cited in Point Six of our Main Brief which establish that a person injured by an illegal act of a government official or administrative agency may obtain judicial relief in the courts, even in the absence of a specific statutory provision for review; for the Constitution requires it.

All of Appellees' argument in Section III of their brief merely comes to this: they have boldly ignored and revised the New York judgment, contrary to the Full Faith and Credit Clause, clouded the plaintiff's status and upset their lives, and expect to be accountable to no one for their illegal and injurious acts.

4. The New York Judgment Is Binding on This Court and on the Appellees:

A. It Is Clearly a Judgment in Rem.

The Appellees now assert (P. 14) that the adjudication of the plaintiffs as widow and children, respectively, of

Maximo Calderon was "only incidental to the Court's determination as to her entitlement to Letters of Administration". And while Appellees apparently do not quite dare come out and say so categorically, they imply in that section of their Brief that the status of plaintiffs was not a "matter necessarily involved" in the New York litigation.

So, let us examine the New York proceeding, for there indeed is the guts of the case. On November 12, 1944, letters of administration had been granted to Aurea (14A). Then on December 22, 1944, Adela instituted an entirely new proceeding or law suit, by filing a petition or complaint in the Surrogate's Court seeking to revoke the letters issued "and for the appointment of the said petitioner as such Administratrix in the place and stead of the said Aurea Calderon, on the ground that she, the said petitioner, and not the said Aurea Calderon, was the lawfully wedded wife of the deceased at the time of his death" (14A).

Thus the proceeding in New York was instituted with a specific purpose, and that was to litigate the status of those involved—to adjudicate who was Maximo's wife at his death. Accordingly, Surrogate Delehanty in his opinion stated the issue, thus: "If she thereby acquired a status as wife of deceased her application must be granted." If there ever were a proceeding instituted for the specific purpose of creating, changing and declaring legal status, this was it.

As is stated in 3 *Freeman on Judgments*, Sec. 1534, Page 3146, shortly before the quotation from that work appearing on Page 14 of Appellees Brief, but omitted by Appellees:

"If a proceeding is designed primarily to determine status it is ordinarily, for that purpose and to that extent, a proceeding in rem and the adjudi-

cation is conclusive as a judgment in rem upon every person interested or affected by the status thus adjudicated."

And as is stated in the case cited by Appellees, *Hilton v. Snyder* (1910), 37 Utah 384, 388:

"If an action, although prosecuted by one individual against another, is instituted for the sole purpose of changing or declaring the status of either one or both of the parties to the action, then, in the absence of fraud or collusion in obtaining the judgment, it is binding upon all the world as well as the parties and their privies."

To the same effect, see *American Woolen Company v. Leshner* (1915), 267 Ill. 11, 107 N. E. 852, cited by Appellees, which relies upon *Hilton v. Snyder*.

The reasoning of *Sorenson v. Sorenson*, 68 Neb. 483, 98 N. W. 837, we submit, supports our position. The case holds that "the right of any particular person to nominate an administrator" is not one of the essential facts upon which the grant is based (496). But we do not dispute that and cannot see that it has any bearing on the facts of our case. For in our case the confirmation of the grant of Letters of Administration was specifically based on the "essential fact" that Aurea was the wife of the decedent. The question of who is Maximo's spouse was specifically litigated in the special law suit described.

The "res" before the Court, which handed down the New York judgment, was primarily the status of the decedent, Maximo, and all involved with him. Adela's brief in the Appellate Division on appeal argued that Maximo's relationship with the third woman, Celia, negated the possibility of marriage to Aurea. So the decedent's relations with the three women were all aired in the New York proceeding, though Celia ("the real widow" according to Appellees brief (p. 16)) did not think she was enough of a widow to intervene in the

special proceeding brought to determine who was Maximo's spouse.

In summary on this point, the New York proceeding had as its sole purpose the creating, changing and declaring of the status of Maximo and those claiming to be his wife. The resulting judgment adjudicated Aurea to be his lawfully-wedded wife, adjudicated the status of these two as husband and wife, and of their children, and adjudicated that no other woman was Maximo's wife. We submit that, if ever one could be found, this judgment is a judgment *in rem*, adjudicating status, of the very clearest, vivid and most forceful character, and binding on all the world, including defendants.

We do not deem it necessary to further answer Appellees' valiant efforts, using the device of assertion, to make it appear that the status of Maximo and the others was not even in issue in the New York proceeding. We submit that on pages 14-17, and elsewhere, in their brief Appellees have wildly misstated the allegations of the complaint. If we have correctly stated the nature of the New York proceeding and judgment, then certainly appellees have no arguments at all. And on this motion to dismiss the complaint the New York judgment speaks for itself (14A) and all the complaint must be liberally construed in favor of the pleader.

B. The New York Judgment Is Binding on Appellees Under the Full Faith and Credit Clause:

Appellees have made no answer to Points Two, Three, Four and Five of our Main Brief and the cases therein cited; and we submit that there is no answer thereto which they can make.

Instead, Appellees go so far as to assert (p. 18) that the Compensation Act has "equal validity with Article IV Section 1 of the Constitution." We have never before

heard a litigant argue that an Act of Congress has "equal validity" with the Constitution, and the argument shows both their defiance of the Constitution and the utter weakness of their position. Appellees are simply saying that they just *will not* be bound by the Full Faith and Credit Clause of the Constitution, and that Congress has authorized them to disregard it.

We may say, frankly, that if such an argument is to be upheld, then the Constitution will be gone. For Congress would then be able to amend the Constitution at will and to block off its enforcement by the judicial branch of the government.

Now, for some of the cases cited by Appellees: In *Ramsey v. United States* (CCA 5, 1932), 61 F. (2d) 444, the judgment involved was held to be a judgment *in personam*, not one *in rem*. See *Henderson v. U. S. Radiator Corp.* (CCA 10, 1935), 38 F. (2d) 674. *Clark v. Clark* (1919), 145 La. 740, 82 So. 875, also involved only an *in personam* judgment. Cases involving "agricultural laborers" and "independent contractors" do not involve status and have no application to our facts.

And as for *Amory v. Amory*, 26 Wis. 152, Appellees describe it wholly erroneously. In that case, the decree in question was based on the finding of a referee "that the plaintiff and defendant were not married on or about the 12th day of March, 1946 or at any other time." And as to this, the Court aptly said:

"If this record is not a finality as to the status of the parties at the time the judgment was pronounced, then we are at a loss to know what record of a judicial proceeding would be."

CONCLUSION

The arguments of Appellees concerning jurisdiction and suits against the United States, are frivolous. Appellees have cited no authority to dispute the points that ours is a judgment *in rem*, binding on all the world and specifically enforceable against the defendants under the Full Faith and Credit Clause. If ever there were a clear case of a judgment *in rem* entitled to Full Faith and Credit, particularly following *Williams v. North Carolina*, 317 U. S. 287, this is it.

The Appellees position is one with far reaching implications. They merely assert that the Full Faith and Credit Clause, although binding on everyone else, is not binding on them, and that Congress can prevent this Court from enforcing that clause against them. They stand in bold defiance of the Constitution. Their position goes to the very foundation of an independent judiciary and the structure of our Constitutional system. We submit that it should be forcefully rejected, and the judgment reversed.

Respectfully submitted,

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